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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 20.01.2023*

\+ **W.P.(C) 11708/2021 & CM APPL. 36194/2021**

INTERGLOBE ENTERPRISES PRIVATE LIMITED ..... Petitioner

Through: Mr. Rohit Jain & Mr. Aniket D Agrawal, Advs.

versus

PR. COMMISSIONER OF INCOME TAX DELHI-4 ..... Respondent

Through: Mr. Shailendra Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner (hereafter 'the assessee') has filed the present petition, *inter alia*, praying as under:-

> "(a) issue a writ in the nature of certiorari/mandamus or any other appropriate writ, order or direction for:
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> (i) setting aside and reversing the impugned order dated 04.10.2021 passed by the Respondent rejecting the application filed by the Petitioner under section 264 of the Income Tax Act, 1961 for assessment year 2014-15 and directing acceptance of application dated 16.02.2018 thereby excluding interest income of Rs.1,51,67,868 from the income of the

Petitioner for assessment year 2014-15; and

(ii) consequential relief, directing the Respondent to immediately allow refund of tax (along with applicable interest, as per law) paid by the Petitioner on the amount of Rs.1,51,67,868 [being interest on income tax refunds pertaining to assessment years 2009-10 and 2010-11] during the assessment year 2014-15, and/ or adjustment of the same towards the tax liability of the Petitioner for assessment year 2012-13, in terms of the Direct Tax Vivad Se Vishwas Act, 2020;

(b) call for the records of the case from the Respondent;

(c) grant an ad-interim ex-parte relief in terms of prayer (a)(ii) above;"

2. The controversy, in the present case, relates to the liability to pay tax on interest received on income tax refund pertaining to the Assessment Years 2009-10 and 2010-11. The petitioner had credited interest amounting to ₹1,61,38,250/- in its books of account for the Financial Year 2013-14. This amount included a sum of ₹1,29,01,031/- as interest on income tax refund for the Assessment Year 2009-10 and ₹22,66,836/- as interest on income tax refund for the Assessment Year 2010-11. Thus, an aggregate amount of ₹1,51,67,868/-, on account of interest on income tax refund(s), was included as income for the Financial Year 2013-14. The assessee included the said amount in its return of income for the Assessment Year 2014-15 and paid tax on the same.

3. The assessee's return for the Assessment Year 2014-15 was picked up for scrutiny and an assessment order dated 28.10.2016 was passed under Section 143(3) of the Income Tax Act, 1961 (hereafter 'the Act'). There is no dispute that income, as assessed, included the said amount of ₹1,51,67,868/- as interest on income tax refund(s) pertaining to the Assessment Years 2009-10 and 2010-11.

4. Thereafter, by a notice dated 15.02.2017, issued under Section 148 of the Act, the assessee's assessment of income for the year 2012-13 was reopened. The interest on refund of tax, for the years 2009-10 and 2010-11, was sought to be included in the taxable income for the Assessment Year 2012-13 on the ground that the said interest was received during the Previous Year 2011-12.

5. Initially, the petitioner contested the inclusion of the said amount of ₹1,51,67,868/-, which was received in the Previous Year 2011-12, as chargeable to tax in the Assessment Year 2012-13. The petitioner, *inter alia*, contended that the said amount was included in the income of the assessee for the Assessment Year 2014-15 and thus, had not escaped assessment warranting any addition in the income changeable to tax for the Assessment Year 2012-13. However, this contention was not accepted and the Assessing Officer passed an order dated 08.12.2017, *inter alia,* adding the amount of ₹1,51,67,868/- as income for the Assessment Year 2012-13.

6. Although the Assessing Officer added the amount of ₹1,51,67,868/- as income for the Assessment Year 2012-13, he did

not pass any order excluding the said amount from the taxable income for the Assessment Year 2014-15. Resultantly, the said amount has been taxed twice over; once, as income assessed under the assessment order dated 08.12.2017 for the Assessment Year 2012-13, and second, in terms of the assessment order dated 28.10.2016 for the Assessment Year 2014-15.

7. The petitioner appealed the assessment order dated 08.12.2017, *inter alia*, contending that it was incumbent on the Assessing Officer to exclude the income of ₹1,51,67,868/- from the income chargeable to tax for the Assessment Year 2014-15, if it was of the view that the same required to be taxed in the Assessment Year 2012-13.

8. Whilst the petitioner's appeal under Section 246A of the Act was pending before the Commissioner of Income Tax (Appeals), the petitioner accepted the addition of ₹1,51,67,868/- in its income chargeable to tax in the Assessment Year 2012-13 and applied under the Direct Tax Vivad Se Vishwas Act, 2020 (hereafter 'the VSV Act') for settlement of the dispute. The liability for the Assessment Year 2012-13 has been finally settled; the petitioner has received the Form 5 and has paid the necessary tax.

9. Since a sum of ₹1,51,67,868/- had been taxed twice over, on 16.02.2018, the petitioner applied for revision of the assessment pertaining to the Assessment Year 2014-15. The respondent did not take any steps in regard to the said application for a period of more than 3.5 years.

10. Aggrieved by the inaction on the part of the Commissioner in not considering its application under Section 264 of the Act, the petitioner filed a writ petition (being WP(C) No.8177/2021) in this Court. The said petition was disposed of by an order dated 11.08.2021, directing the respondent to dispose of the petitioner's application dated 16.02.2018, filed under Section 264 of the Act.

11. The petitioner's application was rejected by an order dated 04.10.2021, which is impugned in the present petition.

12. It is the petitioner's case that the impugned order is, *ex facie*, erroneous as it proceeds on the basis that the issue regarding the interest amount does not form a part of the order under Section 143(3) of the Act. It is contended on behalf of the petitioner that the said reasoning is, *ex facie*, erroneous as the amount of ₹1,51,67,868/-(₹129,01,031 and ₹22,66,836/-) was subjected to tax for the Assessment Year 2014-15 and is included in the income as assessed by the order dated 28.10.2016, passed under Section 143(3) of the Act.

13. Mr. Singh, learned counsel for the Revenue is unable to controvert the aforesaid submission.

14. We have heard the counsel for the parties.

15. It would be relevant to refer to the reasoning of the Commissioner of Income Tax as reflected in the impugned order. The petitioner's application under Section 264 of the Act has been rejected, *inter alia*, on the ground that there was no material in the application made by the

assessee, which would fall within the scope of revision of the order under Section 143 of the Act. The relevant extract of the impugned order reads as under:-

> "Thus it Is evident that the assessee can only ask for revision of any order (other than an order to which section 263 of the Act applies), passed by an authority subordinate to Pr. Commissioner of Income Tax or Commissioner of Income Tax. The provisions of this section enable the assessee to file for revision of any order passed and the contention of the matter to be revised should obviously be a part of the said order passed. In this case the asseasee had filed application ul8 264 of the Act against the order uls 143(3) of the Income Tax Act, 1981 passed by the Addl. Commissioner of Income Tax, Special Range-4-, New Delhi but mentioned about correcting the interest amount wrongly claimed by it in its Return of Income. This Issue does not form part of the order u/8 143(3) of the Act passed by the Addl. Commissioner of Income Tax, Special Range-4-, New Delhi.
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> I have perused the assessment order passed as above and the application u/8 284 of the Act filed by the assessee. I could not find any material in the application made by the assessee which fits Into the scope of revision of the order uls 143(3) of the act passed by the Addl. Commissioner of Income Tax, Special Range-4-, New Delhi. I further find that the contentions in application of the assessee uls 264 of the Act do not conform to the scope of the provision of section 264 of Income Tax Act, 1961. The application made by the assessee is, therefore, rejected.
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> However, this order does not prejudice the assessee to take recourse to any other provisions of the Income Tax Act 1961."

16. Section 264 of Act enables the Principal Commissioner or

Commissioner, on its own motion or on an application made by the assessee, to call for records of any proceedings under the Act or to cause such inquiry to be made and, subject to the provisions of the Act, pass such order thereon as the Commissioner thinks fit. The only condition being that such order cannot be prejudicial to the assessee.

17. Undisputedly, if the records for the Assessment Year 2014-15 are recalled, it would reveal that the sum of ₹1,51,67,868/-, received on account of interest on income tax, was assessed as income for the Previous Year 2013-14 relevant to the Assessment Year 2014-15. However, as stated above, the said amount was brought to tax by the Income Tax Authority in the Assessment Year 2012-13. Clearly, the same amount cannot be taxed twice over.

18. It is settled law that an assessee is liable to pay income tax only on the income that is chargeable under the Act. Merely because an assessee has offered a receipt of income in his return does not necessarily make him liable to pay tax on the said receipt, if otherwise the said income is not chargeable to tax. In ***CIT v. Shelly Products: (2003) 5 SCC 461***, the Supreme Court held that if the assessee had, by mistake or inadvertently, included his income or any amount, which was otherwise not chargeable to tax under the Act, the Assessing Officer was required to grant the assessee necessary relief and refund any tax paid in excess.

19. It is also well settled that the powers conferred under Section 264 of the Act are wide. In ***Vijay Gupta v. Commissioner of Income Tax***

Delhi-XIII & Anr.: 2016 SCC OnLine Del 1961, a Co-ordinate Bench of this Court held that powers under Section 264 of the Act were not limited to correcting any errors committed by the authorities but also extended to errors committed by the assessee.

20. In ***Dwarka Nath v. ITO & Anr.: (1965) 3 SCR 536*** the Supreme Court had in the context of Section 33A of the Indian Income Tax Act, 1922, which is *pari materia* with Section 260A of the Act, observed that the jurisdiction conferred under the said Section is a judicial one. In ***Aparna Ashram v. Director of Income Tax (Exemptions) and Anr.: 2002 SCC OnLine Del 1538***, a Co-ordinate Bench of this Court had observed that even if a power under Section 264 is considered to be administrative, it obliged the concerned authority to act judicially. Further, the Court held that the power conferred on the Commissioner is coupled with the duty to exercise the same "*in the interest of doing real justice between the parties.*"

21. As observed above, it is clear that the amount of ₹1,51,67,868/- cannot be taxed twice. In the aforesaid view, it was apposite for the Commissioner to have revised the assessment order for the Assessment Year 2014-15 in light of the reassessment order dated 08.12.2017, whereby the amount of ₹1,51,67,868/- was brought to tax in an earlier Assessment Year (Assessment Year 2012-13).

22. In view of the above, the impugned order is set aside and the matter is remanded to the concerned Commissioner to pass the fresh order in light of the observations made above.

23. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JANUARY 20, 2023
Ch/RK